

HOUSE AMENDMENT NO.____
TO
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Offered By

AMEND House Amendment No.____ to Senate Substitute for Senate Committee Substitute for Senate Bill No. 114, Page 2, Line 41, by inserting after all of said line, the following:

"(3) Notwithstanding the provisions of subdivision (1) of this subsection, a small brewer may terminate or refuse to continue a franchise with any beer wholesaler without having good cause for termination after a three year period from the date of appointment provided the small brewer first pays compensation to the wholesaler for fair market value. Notwithstanding any provision of this section to the contrary, for purposes of this subsection, the term "brewer" shall mean any person or entity engaged primarily in business as a brewer or manufacturer of beer, and the term "small brewer" shall mean a brewer with an annual volume of less than two hundred thousand barrels of malt beverage and whose case equivalent sales of twenty-four--twelve ounce units in the affected wholesaler's assigned geographic territory is less than .017 during the measuring period. "Case equivalent sales" means the product derived by dividing the number of cases of twenty-four--twelve ounce units of the brewer's malt beverage sold by the wholesaler during the measuring period by the total population in the wholesaler's assigned geographic territory. For the purposes of this subsection, the term "measuring period" shall mean the twelve month calendar period immediately before the date on which the wholesaler receives notice of the termination or refusal to continue the franchise. Prior to the effective date of the termination or refusal to continue, the small brewer shall pay the wholesaler an amount equal to the fair market value of the distribution rights which will be lost or diminished by reason of the termination or refusal to continue the franchise plus the actual laid in cost of any inventory on hand and any costs associated with storage of the product until removed by the brewer. For purposes of this subsection, "fair market value" shall be determined in accordance with the provisions of the written agreement, if any, between the brewer and wholesaler, or if the written agreement between them does not specify how fair market value is determined, then "fair market value" shall be determined by agreement of the brewer and wholesaler. However, if the parties cannot so determine within thirty days after the notice of termination or refusal to continue the franchise, then the matter shall be submitted to mandatory arbitration before a panel of three neutral arbitrators conducted pursuant to chapter 435 or the Federal Arbitration Act, if the latter so applies, with the parties to the arbitration each to bear their own attorneys' fees and costs of the arbitration. Unless otherwise agreed to by the parties after the dispute arises, the arbitration proceedings shall be conducted in the wholesaler's assigned territory. For the purpose of this subsection, the term "annual volume" shall mean: (1) the aggregate number of barrels of beer, under trademarks owned by that brewery and brewed, directly or indirectly, by or on behalf of the brewer during the measuring period, on a worldwide basis, plus (2) the aggregate number of barrels of beer brewed, during the measuring period, directly or indirectly, by or on behalf of any person or entity

Action Taken _____ Date _____

1 which, at any time during the measuring period, controlled, was controlled by or was under common
2 control with the brewer, on a worldwide basis. Annual volume shall not include beer brewed under
3 contract for any other brewer. There shall be no double counting of the same barrels of beer under
4 clauses one and two of this subparagraph. Nothing contained in this subsection shall relieve a brewer
5 from the obligation to satisfy the notice requirements set forth in section 407.405."; and
6

7 Further amend said bill by amending the title, enacting clause, and intersectional references
8 accordingly.